

7-2101-8368-6

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE CITY OF MINNEAPOLIS

In the Matter of the Application
of Jimellie Management, Inc. for an
On-Sale Liquor License, Class A,
for the Premises at 424 Hennepin
Avenue South, Minneapolis.

FINDINGS OF FACT
CONCLUSIONS OF LAW AND MEMORANDUM

The above-entitled matter came on for hearing on November 23 and 24 and December 1, 1993 at the Office of Administrative Hearings in Minneapolis. A hearing was held before Richard C. Luis, Administrative Law Judge, appointed to serve as hearing officer pursuant to an agreement between the Office of Administrative Hearings and the City of Minneapolis under Minn. Stat. § 14.50. The record in this matter closed on February 17, 1994.

The City of Minneapolis (City) was represented by Assistant City Attorney Scott Reeves, 300 Metropolitan Centre, 333 South 7th Street, Minneapolis, Minnesota 55402-2453. Jimellie Management, Inc. (Applicant) was represented by Earl P. Gray, Gray and Malacko, 654 Capital Centre, 386 North Wabasha Street, St. Paul, Minnesota 55102.

Pursuant to the referral by the Minneapolis City Council to this Office for the conduct of the hearing, this Report is limited to Findings of Fact and Conclusions of Law. It does not make a recommendation as to disposition of the matter and attempts not to weigh the importance that should be assigned to one fact or another.

Following the issuance of this Report, this matter will be considered by the Minneapolis City Council, which has authority to accept, modify or reject any of the Findings of Fact or Conclusions of Law made herein, as well to make the final decision with regard to the license application. Persons desiring to appear before the City Council in connection with this matter should

contact Mr. Reeves to ascertain any procedures applicable to such an appearance.

STATEMENT OF ISSUE

Should a Class A on-sale liquor license be granted to Jimellie Management Inc. for the premises at 424 Hennepin Avenue?

Based upon all of the proceedings herein, the Administrative Law Judge acting as hearing officer for the Minneapolis City Council, makes the following:

FINDINGS OF FACT

1. Jimellie Management, Inc. applied for an on sale liquor license, class A, for the premises at 424 Hennepin Avenue South, Minneapolis, Minnesota on April 10, 1992 (Ex. 2; Tr. Vol. I, 7-8). The application stated that the officers and owners of Jimellie Management were Leslie Hafiz and her brother Richard Hafiz (Id.). The application was for a Class A (allowing entertainment) liquor license, and was accompanied by an application for a special license permitting the sale of liquor on Sundays (Id.). Leslie and Richard Hafiz each reside in Woodbury, Minnesota.

2. 424 Hennepin Avenue South is presently occupied on the ground floor by Augie's Bar, which holds an on-sale liquor license, class A. In connection with its application Jimellie Management, Inc. executed an Agreement For the Sale of Assets (Ex. 10) to purchase the assets of Augie's Theater Bar & Lounge, Inc. The purchase agreement is contingent upon approval by the City of Minneapolis of the liquor license application of Jimellie Management, Inc. The license applicant also executed a lease (Ex. 11, Ex. 12) between the building owner and Jimellie Management, Inc. for a ten year term with an option to renew for two additional five year terms. The leased space includes presently vacant space on the second floor and in the basement, as well as the first floor space presently occupied by Augie's Bar. The lease is not contingent upon approval of the Jimellie Management, Inc. liquor license application, but the lease allows Jimellie Management, Inc. to terminate the lease if it does not obtain the necessary licenses and permits to operate. (Ex. 12, Sec.25). The applicant has been making lease payments since May, 1992.

3. Originally Jimellie Management, Inc. submitted plans with its liquor license application indicating it intended to expand the premises to include the second floor and to open part of the first floor ceiling to physically and visually connect the first and second floors in one establishment featuring adult entertainment. (Ex. 13; Tr. Vol. I, 16) - On June 16, 1993 the City advised the applicant by letter that expansion beyond the present Augie's premises was prohibited by the zoning code. (Ex. 14). The applicant responded by letter dated June 21, 1993 indicating that it had withdrawn its plans to expand the premises. (Ex. 15).

The second floor of the leased premises has an area of 5,760 square feet. Augie's Bar currently occupies 2,400 square feet, and the Applicant also leases 1,360 square feet on the ground floor currently occupied by vacant storefront space, a stairway and elevator. Another 2,000 square feet, on the ground floor in the northeast corner of Hennepin Avenue and Fifth Street, is occupied by Pop's Arcade. The Applicant is not purchasing or leasing that space.

4. Jimellie Management, Inc. is a Minnesota corporation with the following shareholders, directors and officers:

Leslie Hafiz	50% Shareholder
Richard Hafiz	50% Shareholder
Leslie Hafiz	Director
Richard Hafiz	Director
Leslie Hafiz	President/Secretary
Richard Hafiz	Vice President/Treasurer

(Ex. 3)

5. Jimellie Management, Inc. was incorporated in February, 1992. has no other known business activities other than the prospective operation a liquor establishment at 424 Hennepin Avenue South. (Tr. Vol. I, 21-22).

6. Jimellie Management, Inc. has never held a liquor license. Its present application is an original application rather than a renewal application. (Tr. Vol. I, 20).

7. When investigating the applicants in an original liquor license application, the city of Minneapolis thoroughly investigates the personal, financial, and business backgrounds of the applicants; the origin of all assets and funds for the new business; the true ownership of the business seeking the license; the person or entities controlling or influencing the applicant business; the persons or entities in actual control of the books, records, and funds of the business; and the veracity of the applicants. (Tr. Vol. I, 34-35).

8. Leslie Hafiz, Richard Hafiz, and Peter Hafiz are siblings and children of James Hafiz (deceased) and Eleanor Hafiz. (Tr. Vol. III, 477-479; Vol. I, 134). The fourth sibling, Stewart Hafiz, has never been involved in the affairs of Jimellie Management, Inc.

9. Upon receiving the application of Jimellie Management, Inc. the police license inspection unit made a request for disclosure of the source of funds for the corporation. The applicant submitted a written statement indicating that the exclusive source of funds was a \$200,000 loan from Peter Hafiz. A promissory note for \$200,000 from Jimellie Management, Inc. to Peter Hafiz dated April 21, 1992 was also provided. Neither Leslie Hafiz nor Richard Hafiz initially supplied any of their own funds to the new business. (Tr. Vol. II, 176-178; Ex. 40).

10. Jimellie Management, Inc. listed Modern Bookkeeping, P.O. Box 400, Durand, Michigan, in its liquor license application, as the firm that does the bookkeeping and accounting. (Ex. 2).

11. Several days prior to April 21, 1992, Peter Hafiz had loaned Jimellie Management \$12,000.00 to cover initial expenses such as the license application fee, attorney fees, and the \$5,000.00 earnest money to acquire Augie's (T. 180; Ex. 44).

12. Leslie Hafiz, age 31, is an experienced and capable person in the field of bar and restaurant management (T. 479). Two of her former employers testified to this effect. Mr. Peter Ceruzzi, General Manager of the Minneapolis Metrodome Sheraton (formerly Hilton) Hotel, testified that Ms.

Hafiz began working at his hotel in January of 1990 as a hostess in the hotel restaurant, but that because of the ability she demonstrated he promoted her after six months to night manager, which put her in charge of the entire hotel as well as the Anchorage Restaurant. (T. 314-15). Mr. Ceruzzi testified that Ms. Hafiz demonstrated a high degree of integrity in the financial matters he entrusted her with in her position of night manager, and that he considers her a very honest person (T. 317). In his opinion, Ms. Hafiz is well-qualified to run a liquor establishment (T. 318).

13. Mr. Alden Landreville, who has successfully owned or operated a number of restaurants in the Twin Cities area since 1967, and who presently owns four Champps restaurants, testified that he came to know Leslie Hafiz in 1983 when she was a hostess at the Blue Horse Restaurant in St. Paul (T. 383, 386; Ex. 76, attachment 7). In June of 1985, Mr. Landreville hired her to work at his own restaurant, called Blackie's, in Oakdale, Minnesota (T. 387). After she worked three months as the lead hostess, Mr. Landreville made her his house manager, which put her in charge of scheduling the servers, arranging banquets, and closing the restaurant at night (T. 381). For six months beginning in September of 1986, Ms. Hafiz volunteered to fill in for the office manager (who was on a leave of absence), a job she performed in addition to her duties as night manager (T. 388). This additional duty required her to take care of numerous business and administrative functions, including submission of the payroll to the company that handled this function for Blackie's (T. 389). Mr. Landreville considered Ms. Hafiz to be a very good, honest employee, and would like to have her back working for him (T. 309).

14. In addition to the jobs described above, between 1986 and 1990 Ms. Hafiz worked as the secretary to the Manager of Sales and Revenue Accounting at Northwest Airlines (Ex. 76, attachment 7). Her duties included researching, compiling, and preparing reports, preparation of payroll, and using computers for projects, data management, and word processing (Id.). Between 1981 and 1983, Ms. Hafiz held jobs as a receptionist, a cashier, and a computer operator (Id.).

15. Richard Hafiz, age 35, is a manager of the Deja Vu Night Club at 315 Washington Avenue North in Minneapolis (T. 477, 485, 488). Deja Vu is a non-alcoholic adult entertainment establishment. Richard Hafiz does not have an ownership interest in the club, which, as discussed below, is partly owned by his brother Peter (T. 485, 488). Richard Hafiz has been the manager at Deja Vu since July of 1990, when the business opened (T. 486). Before taking this position, he was in the construction business for 13 years and worked as the foreman of a blacktopping crew (T. 486).

16. Larry Groll, who owns a bar supply company adjacent to Deja Vu, testified that he knows Richard Hafiz as a customer (Deja Vu purchased equipment and supplies from Groll's company) and as a neighboring business person (T. 323, 325). He testified that he believed that Deja Vu has helped make the neighborhood safer because of the way it conducts its business, and particularly its security system and its monitoring of the parking lots its customers use (T. 326-27). Deja Vu uses the parking lot of Groll's establishment, Minnesota Bar Supply, for valet parking. Based on his

experiences with Richard Hafiz, Mr. Groll believes him to be an honest person (T. 326).

17. Richard Hafiz has never been arrested or convicted of a crime, nor has Leslie Hafiz, Peter Hafiz, or their mother, Eleanor (T. 265, 486).

18. Deja Vu Entertainment Enterprises of Minnesota, Inc. is a Minnesota corporation which owns and operates the Deja Vu club. Deja Vu Entertainment Enterprises of Minnesota, Inc. is owned 75% by Deja Vu, Inc. a

Nevada corporation, and 25% by Jimellie Enterprises, Inc., a Minnesota corporation. (Ex. 19; Ex. 20). Peter Hafiz owns all of Jimellie Enterprises, Inc., which is to be distinguished from the company owned by Leslie and Richard, Jimellie Management (T. 249; Ex. 70).

19. From its origin in 1989 until about April, 1993 Richard Hafiz was an officer of Deja Vu Entertainment Enterprises of Minnesota, Inc. As the manager, Richard Hafiz supervises all bartenders, floor personnel and security personnel. He receives income of approximately \$140,000 per year from Deja Vu. Richard Hafiz and Peter Hafiz share the management responsibilities for Deja Vu, although Peter Hafiz has final authority. (Tr. Vol. III, 488-489).

20. Deja Vu, Inc., a Nevada corporation, is wholly owned by Harry Mohny of Durand, Michigan. (Tr. Vol. I, 133; Ex. 19; Ex. 21). Jimellie Enterprises, Inc. is owned by Peter Hafiz. (Ex. 70-74). Harry Mohny and Peter Hafiz, through their corporations, own the Deja Vu club, with Mohny holding a controlling 75% interest. (Ex. 19; Ex. 20).

21. In a similar corporate ownership arrangement, Harry Mohny and Peter Hafiz own Dream Girls, another nonalcoholic stripper club in downtown Minneapolis, with Mohny owning a controlling 75% interest. (Ex. 21, Ex. 22). The fourth Hafiz sibling, Stewart, is a manager at Dream Girls, which is located on Fifth Street, around the Pop's Arcade corner from Augie's and the vacant storefronts noted at Finding 3.

22. Harry Mohny is the owner of numerous sexually oriented adult businesses, the majority located in the Midwest United States. Mohny owns and controls these businesses through numerous corporations formed by himself or his nominees in which all funds, expenditures, accounting and tax reporting are tightly controlled by him through a wholly owned bookkeeping company known as Modern Bookkeeping Services, Inc. (hereinafter, Modern or MBS). MBS and most of Mohny's corporations are controlled from his central office in Durand, Michigan. (Ex. 25; Ex. 31; Tr. Vol. I, 119-132).

23. In September, 1988 Harry Mohny was indicted by a federal grand jury on six counts of filing false tax returns and one count of conspiracy to defraud the United States Government by impeding, impairing, obstructing and defeating the lawful function of the I.R.S. by concealment of the true source of amounts, and disposition of income received by himself and his business entities from 1973 to 1988. The indictment charged that Mohny owned and controlled these businesses but concealed those facts by using nominees to act as officers and on-site managers. Three other persons were charged with the same conspiracy count, two of whom were employees of MBS (Thomas Tompkins,

Elizabeth Scribner) and one of whom was an attorney for Mohnney's business entities (Lee Klein). (Ex. 25). MBS did in-house accounting for Mohnney's businesses.

24. Harry Mohnney was convicted of all counts in the indictment including the conspiracy count. He is presently incarcerated in a federal prison. (Ex. 28) Two of the other defendants (Klein and Tompkins) were convicted of conspiracy. (Ex. 29; Ex. 30).

25. MBS maintained control over local retail adult businesses by requiring each of the on-site managers to open a local bank account in the name of the business. A facsimile rubber stamp of the manager's signature would be maintained along with the account checkbook at the offices of MBS in Durand, Michigan. In many cases the facsimile stamp would bear the signature of a nominee or fictitious person rather than the on-site manager. All revenues from these businesses would be deposited by the local manager in the account and reported to MBS by means of a daily report. MBS maintained physical possession of the checkbook and controlled all expenditures of the business. The local manager had no ability to write checks on the account. MBS maintained ledger accounts and prepared all tax returns. (Ex. 25; Tr. Vol. I, 119-132).

26. Harry Mohnney and the other indicted conspirators caused MBS to commingle income and expenses of these various businesses without regard to economic reality, to fail to make required disclosures of corporate affiliations, to fail to disclose foreign bank accounts, to conceal assets, ownership and sources of income and to otherwise defraud and hinder the I.R.S. (Ex. 25; Ex. 31).

27. In all Harry Mohnney is believed to own or control at least 70 businesses. Income was shifted from these businesses to other U.S. corporations, foreign corporations, or family trusts under his control. Although Mohnney disputed the exact amount of his tax liability, his tax evasion was of large magnitude over several years' duration. (Ex. 31, pp. 1-20).

28. As of July, 1993, when the police investigation was concluded, Harry Mohnney continued to own and control MBS. MBS continued to handle the accounts, funds, and expenditures of his businesses in the same manner as before, through physical control of the checkbook, facsimile stamp and account books of each business. (Tr. Vol. I, 125-126).

29. Harry Mohnney has had a long standing business relationship with members of the Hafiz family. Mohnney owned the Beverly Theater Corporation, Faust Theater in St. Paul. During the 1980s James Hafiz was the on-site manager of the Faust Theater. MBS controlled the funds, accounts, checkbook and facsimile stamp of Beverly Theater Corporation in a manner consistent with its handling of other Mohnney businesses. A fictitious person was used on the signature stamp. This relationship is described by Ruth Stewart, an MBS bookkeeper, in her testimony in a 1989 trial. (Ex. 36; Tr. Vol. I, 133-136).

30. MIC, Ltd. is a Michigan corporation owned by Harry Mohnney. It is a real estate holding company. MIC Ltd. owned the Faust Theater property in

Paul. In 1989 the City of St. Paul purchased the Faust property from MIC, Ltd. for \$1.8 million. (Tr. Vol. I, 132-138).

31. In 1989 or 1990 MIC, Ltd. purchased the property at 315 Washington Avenue North as partner with Jimellie Enterprises, Inc. MIC, Ltd. owns 75% interest in the property, and Jimellie Enterprises, Inc. owns 25% interest.

In 1990 the Deja Vu club opened at 315 Washington Avenue North. (Tr. Vol. I, 138).

32. MBS also handles the accounts, ledger, funds, checkbook, and facsimile stamp of Deja Vu Entertainment Enterprises of Minnesota, Inc. All checks for expenses are issued by MBS. (Tr. Vol. I, 139140; Ex. 37).

33. The fact that Jimellie Management, Inc. listed MBS as performing bookkeeping and accounting for the business, that its source of funds was a \$200,000.00 loan from Peter Hafiz, that MBS was a principal means by which Harry Mohny concealed ownership of his businesses, and the existence of a past and continuing business relationship between Peter Hafiz and Harry Mohny, all raised concerns in the police license inspector's office. In June, 1992 the police license inspector served requests for information on both Leslie Hafiz and Peter Hafiz. (Ex. 41, Ex. 42). The request to Leslie Hafiz asked for all of the business account records of Jimellie Management, Inc. and all of her personal account records for the previous two years. (Ex. 41). The Applicant furnished these records. The request to Peter Hafiz asked for the business account records for Jimellie Enterprises, Inc. and his personal accounts for the past two years. (Ex. 42). Peter Hafiz refused to provide these records. (Ex. 45). He was also requested to disclose the officers and shareholders of Jimellie Enterprises, Inc. and any other parties with a financial interest in Deja Vu Entertainment Enterprises of Minnesota, Inc. (Ex. 42). These he also refused to disclose. He also refused to provide an annual report or audited financial statement for Deja Vu. (Ex. 45). The Deja Vu Corporation of Nevada also refused to provide its corporate records (Ex. 46). Both Peter Hafiz and the corporations refused because they professed no interest in Jimellie Management, Inc. Peter Hafiz maintained that he had personal financial resources sufficient to provide the loan without involving any business entities.

34. Following the refusal to disclose the above information, the police license inspection unit advised the license applicant on July 29, 1992 that it would not continue to process the application. (Ex. 47).

35. In September, 1992 Jimellie Management, Inc. filed a Petition for Writ of Mandamus seeking to compel the City of Minneapolis to process its license application to completion. (Ex. 16). The City of Minneapolis responded, indicating its reasons for seeking the information sought in its disclosure requests. (Ex. 17). By Order and Memorandum dated November 12, 1992 District Court Judge Allen Oleisky denied the Writ of Mandamus and held that the City's request for information was not an abuse of discretion nor an arbitrary and capricious action. (Ex. 18). The court found that because the City's position was that Peter Hafiz could possibly exert control over Jimellie Management by virtue of his loans to that company, and that Jimellie Management

might be a "front" for Harry Mohny's Deja Vu, Inc., the City had a reason to seek information from these entities (Id.).

36. In its application materials, Jimellie Management, Inc. failed to disclose that on April 15, 1992 Peter Hafiz paid a \$12,000 retainer to attorney Gerald Singer for the benefit of Jimellie Management, Inc. to commence work on its liquor license application. The payment was not disclosed to the City in the applicant's source of funds statement and was not covered in the \$200,000.00 note to Peter Hafiz. The police license inspection unit noted that in its inspection of account records no expenditures for attorneys,

license fees or escrow payments. Upon inquiry by Sgt. Cassman, Gerald Singer told Cassman that he received a \$12,000 retainer from Richard Hafiz. Upon obtaining a copy of the \$12,000 check, Sgt. Cassman learned that it was written by Peter Hafiz on the account of Jimellie Enterprises, Inc. (Tr. Vol. II, 184; Ex. 44).

37. Leslie Hafiz and Richard Hafiz told Sergeant Mark Cassman of the license inspection unit in separate interviews during June and July of 1993 that Peter Hafiz has no ownership or control over Jimellie Management, Inc. its business activities. (Tr. Vol. II, 207-208). Richard Hafiz reaffirmed this position under oath at the hearing. (T. 478). For reasons shown in the balance of this Report, it is found that Peter Hafiz has no ownership of or control over Jimellie Management, Inc. or its business activities.

Leslie Hafiz and Richard Hafiz will manage the prospective liquor establishment. (Ex. 2, p-1).

38. In May, 1992 John Barbour, an architect, was hired to prepare plans for remodeling of Augie's Bar. He had done work previously for the Deja Vu club. Barbour testified that the Augie's work arose out of a meeting he had with Peter Hafiz concerning Deja Vu. Barbour initially met with Peter Hafiz and Richard Hafiz concerning the work. He then met Peter Hafiz and the landlord at the Augie's building. Peter Hafiz, and possibly the landlord, showed Barbour the space which was to be remodeled. Barbour prepared preliminary design drawings and followed up later with a set of hardline schematic drawings (blueprints). (Tr. Vol. III, 337-347). Barbour sent his preliminary design drawings to Peter Hafiz by memo dated May 28, 1992. (Ex. 79). In his memo Barbour described several aspects of the remodeling, including bathroom space, kitchen space, use of the second floor as a topless club, use of an alley for outdoor dining/drinking, and possible skyway access to "Jukebox" (Dream Girls). (Ex. 79). Later in May or June, 1992 Peter Hafiz sent a FAX message to Barbour asking him to call a health department inspector concerning the Augie's project. (Ex. 80). Exhibits 79 and 80 are the only written communications to or from his client in Barbour's file. There is no correspondence with Leslie Hafiz or Richard Hafiz. (Tr. Vol-III, 344).

39. On or about June 26, 1992 Sgt. Cassman visited Leslie Hafiz at the Deja Vu offices to have her sign some release forms. Leslie, Richard, Peter and Eleanor Hafiz were all present. When Sgt. Cassman entered the office Peter Hafiz began talking about the Augie's Bar purchase, pulled out blueprint plans for remodeling of Augie's, and began explaining the plans for Augie's. During this conversation Peter Hafiz was the one speaking and explaining the plans

(Tr. Vol. III, 184-186). During the meeting Peter said something to the effect that "they" were going to open up the second floor. (T. 186).

40. Officer Tim Trebil of the Minneapolis Police Department is acquainted with Peter Hafiz and Richard Hafiz through visits both on and off duty to the Deja Vu club. (Tr. Vol. III, 361-362). Trebil usually engages conversation with Peter and Richard Hafiz when he is in Deja Vu. From time to time Peter and Richard Hafiz have discussed their operation and their plans with Trebil. (Tr. Vol. III, 363-364).

41. In August, 1993 Officer Trebil was in Deja Vu off duty and had a conversation with Peter Hafiz. Peter Hafiz gave Trebil a tour of a newly remodeled expansion of Deja Vu. Peter Hafiz told Trebil about plans for acquiring and remodeling Augie's Bar. He stated that "we" had acquired Augie's Bar and "they" were in the process of trying to renovate it as another club. He stated "they" wanted to expand the bar and obtain a liquor license so "they" could have an establishment like Solid Gold. He said "they" wanted to acquire the Pop's Video Arcade property, so "they" could use the whole building. Peter Hafiz told Trebil that the City was fighting very hard to stop them from getting a liquor license, and that his sister Leslie was going to run the business because she had a clear record and would be able to obtain a liquor license. (Tr. Vol. III, 365-374).

42. After Jimellie Management's lawsuit was dismissed by Judge Oleisky's November 12, 1992 Order (see Finding 35) its application lay dormant for several months (T. 480). During this time, Jimellie Management sought a source of financing other than Peter Hafiz (T. 197; Ex. 48). On February 2, 1993, Jimellie Management's then attorney, Gerald Singer, wrote a letter to Lt. Philip Hafvenstein, a City police license inspector involved in this case, stating that the National City Bank of Minneapolis was going to loan his clients \$200,000 to fund the purchase of the bar business at Augie's and the cost to remodel the premises (T. 179, 197). Mr. Singer's letter also stated that Jimellie Management was amending its license application to state that bookkeeping for the new establishment would be done by Leslie Hafiz, not Moore Bookkeeping, as had been indicated in the original application (T. 198, 448; Ex. 48).

43. The \$200,000 loan Jimellie Management received from the National City Bank on February 3, 1993, was secured by a mortgage on the home of Eleanor Hafiz, the mother of Peter, Leslie, and Richard Hafiz, and also by a pledge from Eleanor Hafiz of her Marsh & McClennan stock (T. 201-02; Exs. 50, 76). Sgt. Cassman testified at the administrative hearing in this case that his investigation of the National City Bank loan and the Eleanor Hafiz collateralization and third-party stock pledge disclosed that Eleanor Hafiz owned her home and the Marsh & McClennan stock since the 1960's (T. 270-71; 67A, pp. 1-2). Sgt. Cassman's investigation also disclosed that the National City Bank loan was in fact the new source of funding for Jimellie Management's acquisition of Augie's, and that Peter Hafiz was no longer a source of financing for Jimellie Management (T. 271).

44. Once Jimellie Management received the loan proceeds from the National City Bank in February of 1993, it repaid Peter Hafiz his \$200,000 loan, plus interest (T. 487). Jimellie Management had previously, on August

18, 1992, repaid Peter Hafiz the \$12,000.00 he had loaned it on April 15, 1992. Mr. Singer provided verification of the latter repayment (T. 182, 274 Ex. 44). Jimellie Management's present attorney again provided the city with proof of repayment attached to a letter he sent to Assistant City Attorney Scott Reeves on May 25, 1993 (Ex. 76, attachment 8).

45. In response to Mr. Singer's letter to Lt. Hafvenstein, Assistant City Attorney Scott Reeves wrote a letter to Mr. Singer on April 20, 1993, stating that based on the representations Mr. Singer had made, the Police

Department License Inspection Unit would withdraw its request for the records of the personal accounts of Peter Hafiz, but that the request for the business records of Jimellie Enterprises and Deja Vu Entertainment Enterprises of Minnesota remained (T. 200; Ex. 49).

46. Jimellie Management, Inc. did not discontinue using MBS for bookkeeping and accounting after Gerald Singer's February 2, 1993 letter. Jimellie Management, Inc. continued to use MBS until after an in person interview between Sgt. Cassman and Leslie Hafiz on May 27, 1993. During the interview specific questions were asked concerning the physical possession of the account records of Jimellie Management, Inc. Return of the account records was sought by the Applicant on the following day, May 28, 1993. (Tr. Vol. 206; Ex. 53; Ex. 54; Ex. 55; Ex. 81; Ex. 84). See Finding 53, below.

47. After Jimellie Management obtained its bank loan and the City renewed its liquor-license investigation, Sgt. Cassman conducted several interviews with members of the Hafiz family. On May 27, 1993, Cassman interviewed Eleanor Hafiz about her collateralization of the bank loan (T. 202). Leslie Hafiz accompanied her mother to the meeting (Id.). Leslie Hafiz made a comment that it was taking a long time to obtain the liquor license and that she had already made some payments under the lease that had been executed for the building where Augie's was located, and had written the checks herself (T. 203-04, 225). Cassman testified he asked Ms. Hafiz how many checks she had written and the amounts, but that she declined to comment (T. 204). A review of the transcript of the audio tape of this meeting reveals that Ms. Hafiz said that she had been away from everything for the preceding two months because of medical problems and that Richard Hafiz had been taking care of the things (T. 294, Ex. 67A, pp. 15-17).

48. Sgt. Cassman asked Leslie Hafiz if she physically signed the checks, and she responded that she did. (Ex.81, p.16). She then stated that she had signed a facsimile, that she wasn't sure who was taking care of the account, and thought Richard Hafiz had been taking care of matters. (Ex. 81, p.17; Tr. Vol. II, 206).

49. Sgt. Cassman again interviewed Leslie Hafiz on June 8, 1993 to update his inquiry into the source of the funds to be used for the acquisition and operation of Augie's (T. 209). At this meeting, Ms. Hafiz said that her brother Richard had written the checks she had referred to at the May 27 meeting, and that Richard had been handling the accounts since their present attorney had taken over the case from Mr. Singer, which was in April or May 1993 (T. 209-10, 297). She said that Richard filled out the checks using his signature stamp (T. 210).

50. Sgt. Cassman met with Richard Hafiz on June 14, 1993, and received from him copies of Jimellie Management's check ledger (T. 211; Ex. 52). Richard said he had written some of the checks indicated in the ledger by using Leslie's signature stamp, and that he had done this in April or May of 1993 after the attorney presently representing him had taken over the case from M. Singer (T. 211, 213-14). Richard referred specifically to writing a

check dated 1 June 1993 (T. 304; Ex. 68A, p. 2), and stated he "wrote" a check for attorney fees "last month". Exhibit 51, item number 137, was issued to the law firm of Gray and Malacko on May 27, 1993.

51. Sgt. Cassman, based on what he believed Leslie and Richard Hafiz had said to him during their interviews about writing checks before June of 1993, next requested Karen Runyon, a handwriting analyst, to examine the Jimellie Management check ledger (Ex. 52) to compare the handwriting of the entries made before June 1, 1993 (T. 302). Runyon concluded that all the ledger entries written before June 1, 1993, for checks 101-38, were prepared by the same person, but that the entry for check 139, written June 1, 1993, was prepared by someone else (T. 80). Runyon also examined copies of the checks 101-39 (Ex. 51) issued from the ledger and concluded that they had been written by the same person who made the ledger entries in Exhibit 52, with the exception again of check 139, which in Runyon's opinion had been written by someone else (T. 79).

52. After obtaining Runyon's opinion, Sgt. Cassman re-interviewed Leslie Hafiz on July 1, 1993 (T. 304). He accused her of having said on May 27, 1993 that she had written checks in April and May of 1992, which he believed would have been inconsistent with her statement on June 8, 1993 that she had not written any such checks but that Richard had, using her signature stamp (T. 304-05). Ms. Hafiz then denied that she had ever lied to him (T. 305).

53. On July 14, 1993 Sgt. Cassman traveled to Michigan and interviewed Paulette Held concerning the Jimellie Management, Inc. account. Paulette Held is the bookkeeper who was assigned to the account. The interview was recorded. (Ex. 53) Held stated that on May 28, 1993, the day after Sgt. Cassman's interview with Leslie Hafiz, she received a telephone call from Leslie Hafiz asking her to return all account records. (Ex. 53, p.5.) Held shipped all account records, including ledger, checkbook, and facsimile stamp by UPS on May 28, 1993, the same day as the phone call. (Ex. 53, p.5). During the interview Sgt. Cassman asked Held to produce the UPS shipping order. At a break during which it appeared to Cassman as though Held was talking on the telephone, Held returned with the UPS shipping record. (Tr. Vol. II, 225-226) The shipping record indicated the account books had been shipped to "R. Hafiz c/o Deja Vu Ent." (Ex. 54). However, the original shipping order obtained from UPS indicated the account books had been sent to "P. Hafiz Deja Vu Ent." (Ex. 55). (Tr. Vol. II, 221-230).

54. Ms. Runyon also compared the UPS shipping record obtained from M (Ex-54) to the shipping record on file with UPS (Ex. 55) and found

characteristics of overwriting and possible alteration of the record provided by MBS. (Ex. 64; Tr. Vol., 81-84). The overwriting consisted of changing "Hafiz" to "R. Hafiz" and adding "c/o" before "Deja Vu Ent." (Ex. 54; Ex. 64).

55. Sergeant Cassman was in no position to ascertain whether Ms. Held's delay in bringing him the UPS receipt was caused in part by a phone call to her. Because he was not in sufficiently close physical proximity to Held and could not see her when she retrieved the UPS receipt, he is not

competent to testify as to any phone call Held may have made or received, and is not competent to testify as to who, when or why any alteration of the receipt took place.

56. Janet Fournier was a supervisor at MBS until January, 1993. She told Sgt. Cassman that if she had received special orders from Leslie Hafiz regarding the Jimellie Management, Inc. account, she would need to get clarification directly from Peter Hafiz. (Tr. Vol. II, 236). Ms. Fournier did not handle the Jimellie Management account directly, Paulette Held did. Ms. Held told Cassman she took instructions regarding the account directly from Leslie and Richard Hafiz.

57. Jimellie Management's initial use of Modern Bookkeeping, Inc. to handle its accounts was made by Richard Hafiz. Although Modern Bookkeeping is connected to Harry Mohny, Mr. Hafiz chose it because of the good work it had done for his family in the past. (Ex. 68A, p. 26). Jimellie Management has never tried to hide its use of this business, and in fact stated on its license application that Modern would be handling its books (Ex. 2). As detailed above, Jimellie Management has discontinued using Modern's services and Modern returned all of Jimellie Management's records in May of 1993, at Leslie Hafiz's request.

58. Peter Hafiz has been interested in obtaining an on-sale liquor establishment in Minneapolis. Peter Hafiz and Richard Hafiz had previously tried to acquire an interest in Jukebox Saturday Night by negotiating with the owner to arrange financing for that business while it was in a Chapter 13 bankruptcy proceeding. (Tr. Vol. III, 457-458).

59. Neither Leslie Hafiz nor Peter Hafiz testified at the hearing.

Based upon the above Findings of Fact, the Administrative Law Judge (Hearing Officer) makes the following:

CONCLUSIONS OF LAW

1. Any of the foregoing Findings of Fact more properly considered Conclusions of Law are hereby adopted as such.

2. The City of Minneapolis gave proper notice of the hearing and jurisdiction over this matter is properly before the Minneapolis City Council pursuant to Minn. Stat. Chapter 340A and Chapter 362 of the Minneapolis City Charter.

3. Leslie Hafiz and Richard Hafiz, sister and brother and equal owners of Applicant Jimellie Management, Inc., are of good moral character and reputable within the meaning of Minn. Stat. § 340A.402(4).

4. A grant of the application for Class A on-sale liquor licensure to Jimellie Management, Inc. would not be contrary to the public interest within the meaning of Minn. Stat. § 340A.412, subd. 2(b).

5. The Applicant has cooperated with the background and financial investigation mandated by Minn. Stat. § 340A.412, subd. 2(a).

6. The Applicant and its owners meet all qualifications for license found in §§ 362.320 and 362.330 of the Minneapolis City Charter.

7. The Applicant and its owners are not associated improperly with or influenced by persons involved in criminal activity.

8. The Applicant is not controlled by any person or entity other than its owners, Leslie Hafiz and Richard Hafiz. Leslie Hafiz and Richard Hafiz are not the direct beneficiaries of any business operated under the applied-for license.

9. The Applicant has not misrepresented or concealed material facts in connection with the investigation into its license application.

10. The Applicant's use of Peter Hafiz (brother of Leslie Hafiz and Richard Hafiz) as a source of financing initially is immaterial because Peter Hafiz was disclosed as a source of funds, the Applicant has paid off its debt to Peter Hafiz and has obtained an alternate source of financing.

11. The Applicant's initial use of Modern Bookkeeping Services (MBS) is immaterial because the Applicant disclosed that it was using MBS for bookkeeping services initially and later made alternate arrangements for such services.

12. Any inconsistent statements made by Leslie Hafiz or Richard Hafiz to Minneapolis police license investigators regarding check writing and control of the books and records of the Applicant were inadvertent or mistakes that do not evidence an attempt to mislead or conceal information during the license investigation process.

Dated this 21st day of March, 1994.

/s/ Richard C. Luis
RICHARD C. LUIS
Administrative Law Judge

Reported: Brennan & Associates and Kirby A. Kennedy & Associates

Jean Brennan, Gail Hinrichs and Angela Sauro, Court Reporters

MEMORANDUM

In issuing his Findings and Conclusions, the Administrative Law Judge endeavored not to attach weight to the facts found. However, in finding certain facts or arriving at conclusions from those facts it was necessary to assess the credibility of certain assertions.

It is argued by the City that the Applicants have not cooperated with the licensing process. The record does not reveal a lack of cooperation by the Applicant's owners. It is so concluded because they are without legal power to force Peter Hafiz, Harry Mohny or any of the corporations owned or controlled by them to produce business records. Each time the Applicant or its owners have been requested to produce their business or financial records, to appear for interviews or produce any relevant information, compliance has been prompt. The 1992 court action filed by the Applicant was not an attempt to delay the process. It was an effort to reactivate a procedure the City had discontinued.

It is the Judge's understanding the Minneapolis Police License Inspection Unit has recommended against granting this application also because it concludes that the Applicant's owners are dishonest and sought to conceal material facts during the course of the investigation. Since it is undisputed that the now-severed financial obligation to Peter Hafiz (a business partner of convicted felon Harry Mohny) was disclosed from the start, the debt to Peter Hafiz no longer exists and the business relationship between the Applicant and Modern Bookkeeping Services (owned by Mohny) was disclosed from the start and has now been terminated, the Judge finds no basis for a conclusion that Leslie Hafiz and/or Richard Hafiz will be controlled in the operation of their enterprise by anyone other than themselves. Nor have they tried to conceal material facts.

The most significant allegations to the contrary involve the "non-mention" of a \$12,000 loan from Peter Hafiz for initial license application and attorney fees, which can be explained by timing (the application was filed before the loan was made) and a simple misinterpretation of a statement made by the Applicant's previous counsel, and the fact that three City witnesses were left with the impression that Peter Hafiz will be in control of the club proposed for operation under the license. Two of the witnesses, an architect who drew plans for remodeling of Augie's and an undercover policeman who spoke to Peter Hafiz as a friend, heard a gregarious and boastful brother state plans "they were to carry out (and statements to that effect) in connection with the future of his siblings Leslie and Richard. The Administrative Law Judge has weighed the statements made to witnesses Barbour and Trebil in light of the undisputed

evidence as to Peter Hafiz's personality, the closeness of the siblings and complete financial and legal separation of the Applicant from Peter Hafiz and/or Harry Mohny and concludes there is no control of Jimellie Management Inc. by anyone except Leslie Hafiz and Richard Hafiz.

It is noted that the transaction with Barbour occurred while Peter Hafiz was still a creditor of the Applicant. Given that background, his actions and statements do nothing to impeach the position that Richard and Leslie Hafiz

are currently in full control of the Applicant's business. The conversation with Trebil, on close analysis, reveals only a past involvement by Peter and also does not bring into question the current control of Leslie and Richard Hafiz over the Applicant's affairs. Nor has the Applicant tried to conceal involvement with or by anyone else - the past relationships with Peter Hafiz and Mr. Mohny's Modern Bookkeeping Services were disclosed fully and are no longer material.

The other incident indicating (to the City) an effort to conceal the involvement of Peter Hafiz relates to the changing of a copy of a shipping invoice from Modern Bookkeeping Services when it returned the records and signature stamp of the Applicant to Minneapolis in late May, 1993. The invoice copy obtained from the courier shows clearly the package was shipped to "P. Hafiz". The invoice copy obtained from Modern Bookkeeping Services in mid-July, 1993 was altered crudely to indicate a shipment to "R. Hafiz". City witness Cassman concluded the document was altered by Modern Bookkeeping's personnel pursuant to orders given over the telephone. The credibility of this assertion is very thin. The witness did not see the alteration take place and he did not hear or otherwise observe the alleged telephone conversation on which he attributes a delay in obtaining receipt of the invoice. Given the past relationship with various Hafiz family businesses, it is plausible that anyone at Modern Bookkeeping would mail correspondence intended for any Hafiz to Peter Hafiz. In addition, anyone knowing it was important to show that Richard Hafiz had taken over the bookkeeping after Modern's services were terminated could have made the alteration on their own initiative. Either explanation is equal in credibility to the City's theory that Modern was instructed to alter the invoice copy by one of the Hafizes. It is noted further that even if the orders for the alteration came from one of the Hafizes, there is no evidence the instruction did not come from Peter Hafiz or some other person rather than from Leslie Hafiz or Richard Hafiz.

Sgt. Cassman accuses both Leslie Hafiz and Richard Hafiz of dishonesty during statements made by them regarding when they took over the bookkeeping duties connected with Jimellie Management, Inc. It is noted the City's initial concern stems from its belief that the Applicant's then attorney informed it that Leslie Hafiz would start keeping the books on February 2, 1993. Examination of Exhibit 48 reveals only a representation that the books for the "establishment" (not yet in operation) "will" be done by Leslie Hafiz (implying a future time). The Administrative Law Judge has concluded the statements of Leslie and Richard Hafiz seized on by the City, though inaccurate, were mistakes and not made with an intention to deceive. It is so concluded, in part, because the amount of attention paid by either to the precise dates certain checks were written and whether or not they were written by either

Applicant or Modern Bookkeeping personnel (using Leslie Hafiz's signature stamp) are precise details difficult to recall, especially if the transactions are routine bill payments. It is noted that routine bill payments are the type of transactions reflected on Applicant's books, before and after custody of the books was transferred from Modern Bookkeeping back to the Hafizes. statement by Leslie or Richard Hafiz to the effect

that they "wrote" checks that the evidences shows actually were written by Modern Bookkeeping personnel (using Leslie's signature stamp) is interpreted by the Judge as a mistake in recollection or merely usage of a choice of wording that City license inspectors have misinterpreted. It is entirely plausible that a person recalling the authorization of issuance of a check to pay a bill when the actual preparation of the check is done by a third party using an authentic signature stamp, will refer to such a past transaction as a "writing" of that check by themselves.

For example, Richard Hafiz's statement to the investigator that he "wrote" a check to his attorney in May, 1993 (he may have authorized it, but it was prepared and issued from Modern Bookkeeping in Michigan) is either an innocent statement in which the declarant used the word "wrote" instead of "authorized" the writing (or issuance) of " " or, as City personnel interpreted it, a lie to cover up Modern's involvement. The Judge concludes Mr. Hafiz was mistaken and did not lie because he had no substantive reason to fabricate on the question of who actually "wrote" the check. The only reason to lie would be to allege he, and not Modern, had physically issued the check. This would be consistent with Leslie's earlier statement that he (Richard) was "handling" Jimellie Management's affairs at that time, but a scenario whereby Richard authorized Modern to issue checks using Leslie's stamp is equally consistent. It has been concluded, therefore, that Richard's statement that he "wrote" the May 27 check was a simple mistake carrying no intention to lie.

Another instance involves Sgt. Cassman's conclusion that Leslie Hafiz lied to him on May 27, 1993 when, in the context of an interview with Eleanor Hafiz, mother of Leslie, Richard and Peter, Leslie is alleged to have stated she physically writes the checks "now" (as of May 27). A careful review of the transcript and tape reveals Ms. Hafiz was equivocal at best on that point and really was telling Cassman she did not want to get into such details then without an attorney present and in a situation where she, after just recovering from a lengthy illness, was present ostensibly only to accompany her mother who was the real object of the interview. Later, on July 1, 1993, after she clarified the situation, Ms. Hafiz was accused by Cassman of lying to him earlier, both as to physically writing the checks as of May 27, and as to when Richard Hafiz took over the bookkeeping on a temporary basis. Again, as to that last detail, it is a plausible interpretation of the tapes and transcript to conclude that Leslie Hafiz was merely mistaken, and, like her brother, pegged these events to the time she and Richard retained their current counsel.

On that point, confusion as to precise timing is likely because counsel was approached in April but not retained until approximately May 25, 1993. It is noted that these details, and whether or not one recalls them with

precision, are generally mundane and (arguably) immaterial, given the fact that the Hafizes never tried to hide their involvement with Modern Bookkeeping from the beginning. It is concluded that Leslie and Richard Hafiz, in their confusion over details, led themselves into responses that were later shown to be mistaken. The evidence does not show an intent to lie or conceal the involvement of other persons in the prospective business.

RCL